

STATE OF MICHIGAN
COURT OF APPEALS

GIBRALTAR LAND COMPANY,

Plaintiff-Appellee,

v

DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Defendant-Appellant.

UNPUBLISHED
September 27, 2005

No. 258258
Ingham Circuit Court
LC No. 04-000043-AA

Before: Meter, P.J., and Murray and Schuette, JJ.

PER CURIAM.

Defendant Department of Environmental Quality (MDEQ) appeals by leave granted an order reversing its denial of a permit to expand plaintiff's landfill. We reverse and remand for reinstatement of MDEQ's denial of the construction permit.

I. FACTS

By statute, Wayne County must prepare and maintain a solid waste management plan (SWMP). Plaintiff owns and operates the "Countywide Landfill" in Wayne County. A MDEQ permit is required to construct or expand a Michigan landfill; MDEQ may only issue these permits after consulting with the local solid waste planning agency and determining that the local SWMP incorporates the new or expanded facility. Plaintiff sought agreement to expand the landfill from the City of Gibraltar, where the landfill is located.

On March 8, 2002, Wayne County submitted a periodic update, called the "2000 Plan Update," to MDEQ for review and approval to replace its 1990 SWMP. A statute, MCL 324.11537(1), requires that MDEQ "shall, within 6 months after a plan has been submitted for approval, approve or disapprove the plan."

In January 2002, the Wayne County Landfill Siting Committee refused plaintiff's request to consider the expansion request under a "fast-track" process defined in the 1990 SWMP. However, the Wayne County Executive reversed the siting committee's decision and directed that the fast-track process be used on April 18, 2002. In June 2002, under the fast-track approval procedure, plaintiff asked the Wayne County Landfill Siting Committee to amend the 1990 SWMP to allow it to expand its Countywide Landfill. On July 5, 2002, the Wayne County

Department of Environment, Land Resource Management Division recommended that the siting committee approve plaintiff's application for inclusion in the county SWMP. Instead, the siting committee denied the expansion request on July 25, 2002. Plaintiff appealed, using the procedure specified in the 1990 SWMP.

On November 7, 2002, MDEQ approved the 2000 SWMP update and it became effective, subject to modifications specified in the MDEQ approval letter. Six days later, on November 13, 2002, acting under the 1990 SWMP, the county executive reversed the siting committee's refusal to incorporate expansion of plaintiff's landfill into the county SWMP. No requests for rehearing, review, or reconsideration of that reversal were filed.

On June 16, 2003, MDEQ wrote to Wayne County. The letter noted that several legislators had expressed concern about plaintiff's proposed expansion but also noted that it was taking no action because there was then no construction permit application pending. However, the letter also stated that MDEQ "has reviewed the circumstances surrounding Wayne County's consideration of the proposed expansion" and determined that the siting committee's refusal to include the proposed expansion in the SWMP was "the last formal action taken" in the matter, rather than the county executive's reversal of that decision. Wayne County responded that the county executive's decision adding plaintiff's expansion proposal to the county SWMP was valid.

On September 2, 2003, plaintiff submitted an application for a construction permit to expand its landfill, which the county submitted to MDEQ for approval. MDEQ denied the construction permit application on December 23, 2003, writing that "the proposed vertical expansion of the facility is not consistent with the current Wayne County Solid Waste Management Plan . . . which was approved by the DEQ and became effective on November 7, 2002." MDEQ asserted that the county executive's decision to include the landfill expansion in the county SWMP was ineffective because "the [2000 SWMP] does not provide to the Wayne County Executive the authority to reverse the action of the Committee" and, therefore, the committee's refusal to add the proposed expansion to the county SWMP was still effective.

Plaintiff appealed denial of the construction permit in Ingham Circuit Court "pursuant to MCL 600.631." The court heard argument by the parties and considered the appeal on stipulated facts. The court reversed MDEQ's decision to deny the construction permit after concluding that the denial was "not authorized by law." The court stated only one ground for reversing MDEQ's decision, that approval of the 2000 SWMP update was untimely:

[MDEQ] admits that it exceeded the statutory 6-month period, but argues that the legislature's failure to outline a consequence for not complying with said statute excuses the violation. The Court declines to defer to the agency's interpretation in that respect. Rather, the maxim that an agency's interpretation cannot overcome the plain meaning of a statute is most apropos. [MDEQ's] contention that the law affords it with discretion to exceed the mandatory 6-month period is unpersuasive. Accordingly, [MDEQ's] action was not authorized by law.

MDEQ applied for leave to appeal, which this Court granted, "limited to the issues raised in the application."

II. STANDARD OF REVIEW

“The appellate standard of review when examining jurisdictional rulings is de novo.” *Jeffrey v Rapid American Corp*, 448 Mich 178; 529 NW2d 644 (1995).

III. ANALYSIS

The court erred by allowing plaintiff to appeal the denial of its construction permit application on the grounds that the 2000 SWMP update had not been adopted properly.

Plaintiff appealed denial of the construction permit “pursuant to MCL 600.631,” which reads as follows:

An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in accordance with the rules of the supreme court. [*Id.*]

A court rule specifically addresses appeals filed under that statute:

An appeal in the circuit court under MCL 600.631 is governed by MCR 7.101 and 7.103, except that the bond requirements do not apply. [MCR 7.104(A).]

MCR 7.101 deals with appeals by right to the circuit court, whereas MCR 7.103 deals with appeals by leave. MCR 7.101(B)(1) requires that appeals be filed within twenty-one days; however, a “circuit court may grant leave to appeal . . . when (1) no appeal of right exists, or (2) the time for taking an appeal under MCR 7.101(B)(1) has expired.” Thus, plaintiff’s failure to appeal the 2000 SWMP update approval within twenty-one days was not necessarily fatal to its ability to appeal the approval directly. However, the rule goes on to specify a maximum six-month limit on delayed applications for appeal by leave:

An application under subrule (A)(2) or an application that is not timely under subrule (B)(1), must be accompanied by an affidavit explaining the delay. The circuit court may consider the length of and the reasons for the delay in deciding whether to grant the application. A delayed application may not be filed more than 6 months after entry of the order or judgment on the merits. [MCR 7.103(B)(6).]

Time limits on appeals are jurisdictional, and failure to timely file deprives the court of jurisdiction to hear the appeal. *Davis v Dep’t of Corrections*, 251 Mich App 372, 374-375; 651 NW2d 486 (2002) (citations omitted).

Another rule generally allows a court to permit a party to take an action after a deadline if the failure to meet the deadline was the result of excusable neglect. MCR 2.108(E). “However, if a rule governing a particular act limits the authority to extend the time, those limitations must be observed.” *Id.* In this case, rule MCR 7.103(B)(6) specifies that delayed applications for leave to appeal “may not” be filed more than six months after the order or judgment in question. Thus, in the case of administrative appeals brought under MCL 600.631, a circuit court has no jurisdiction over an appeal challenging an agency action that occurred more than six months before the appeal is filed.

Plaintiff’s argument that it could not have known of a need to appeal the 2000 SWMP update is unconvincing because plaintiff was involved in an appeal over the landfill expansion throughout 2002. That appeal culminated with the county executive’s reversal of the denial of plaintiff’s proposed expansion six days after MDEQ approved the 2000 SWMP.

Further, plaintiff’s argument that it would not have had standing to appeal the revised plan until its construction permit application was denied is unpersuasive. As a landfill business involved in an administrative appeal under the existing SWMP, plaintiff would have had strong arguments for its standing to either (a) immediately challenge its omission from the revised SWMP or (b) bring a declaratory judgment action asking the court to order that plaintiff’s appeal be concluded under the prior SWMP procedures. Instead, plaintiff filed suit over the construction permit denial more than a year after MDEQ approved the 2000 SWMP update. Thus, the trial court erred by allowing plaintiff to appeal the denial of his construction permit application where it lacked jurisdiction.

In addition, we note that the trial court clearly erred by determining that, because MDEQ was late in issuing final approval for Wayne County’s 2000 SWMP update, the approval was void and, therefore, that the prior SWMP procedures were still in effect. The trial court created and appended a sanction expressed nowhere in the text of the statute to penalize MDEQ for its failure to meet a time limit for reviewing SWMPs. Further, the sanction the court chose – to assume that a plan not timely approved should be treated as void –was erroneous.

The rule is that courts may not construe an unambiguous statute or infer the existence of a sanction not expressly given in the statutory language:

When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature’s intent as expressed in the words of the statute. We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature’s intent only if the statutory language is ambiguous. Where the language is unambiguous, “we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written.” Similarly, courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature.

When parsing a statute, we presume every word is used for a purpose. As far as possible, we give effect to every clause and sentence. “The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another.” Similarly, we should take care to avoid a construction that renders

any part of the statute surplusage or nugatory. [*Pohutski v Allen Park*, 465 Mich 675, 684; 641 NW2d 219 (2002) (citations omitted).]

Other statutes dealing with solid waste management contained express sanctions for untimely MDEQ actions. Both MCL 324.11511(1) and MCL 324.11516(1) included¹ sanctions for any failure by MDEQ to decide permit or license applications within the time specified: “If the department fails to make a final decision within 120 days, the permit shall be considered issued;” “If the department fails to make a final decision within 90 days, the license is considered issued.” If the court’s ruling establishing a sanction where none is expressly provided is upheld, then the purpose of the express sanction language in the other sections is cast into doubt. Where the Legislature saw fit to expressly establish sanctions in some sections, the omission of sanctions in others must be presumed intentional if the sanctions language is not to be made surplusage. We will not read a remedy into a statute where the Legislature has decided not to include any.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Bill Schuette

¹ Both sections, among others, were later amended (2004 PA 325, effective September 10, 2004). These amendments have no effect on this appeal.